**IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**

**SPECIAL CIVIL APPLICATION No. 23148 of 2006**

**For Approval and Signature:**

**HONOURABLE MR.JUSTICE RAVI R.TRIPATHI**

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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**DIPABEN KETANKUMAR PADHYA**
**Versus**
**MADHUSUDHAN PRAHLADJI PADHYA AND ANOTHER**

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**Appearance :**
MR UI VYAS for the Petitioner
MR DIPAK R DAVE for Respondent No.1
MR PR ABICHANDANI for MR CR ABICHANDANI for Respondent No.2

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**CORAM : HONOURABLE MR.JUSTICE RAVI R.TRIPATHI**

**Date : 30/04/2007**

**ORAL JUDGMENT**

1. **RULE**. Learned advocate Mr.Dipak Dave waives service of Rule on behalf of respondent No.1. Learned advocate Mr.Abhichandani waives service of Rule on behalf of

respondent No.2.

2. The petitioner – original defendant is before this Court being aggrieved by judgment and order dated 23.08.2006 passed by the learned 2nd Additional District Judge, Ahmedabad (Rural), allowing the appeal being Civil Misc.Appeal No.55 of 2006 filed against an order passed by the learned 2nd Additional Senior Civil Judge, Ahmdabad (Rural) dated 29.06.2006.

3. The facts of the case are that the father of deceased Ketankumar Madhusudhan Padhya filed a suit being Regular Civil Suit No.281 of 2005 under Section 6 of the Specific Relief Act, 1963 ("the Act", for short) and prayed that it be declared that the plaintiff is illegally dispossessed from the property being Krishna Apartment No.C/302. It is also prayed that the defendant shall return the possession to the plaintiff and if the defendant does not doe that, the Court, through Court Commissioner, get the possession of the property to the plaintiff.

Along with that, application Exh.5 was filed, which was rejected by the aforesaid order dated 29.06.2006. Against the aforesaid order, Civil Misc.Appeal No.55 of 2006 was filed, which is partly allowed and the defendant – petitioner herein is restrained from selling,

mortgaging, gifting or transferring by any way the aforesaid property No.C/302, Krishna Apartment, Satellite, Ahmedabad till the final decision of the suit.

4. It is on record that the property stood in the name of the deceased Ketankumar – husband of the petitioner herein and for that, he had obtained loan from ICICI Bank.

It is the case of the plaintiff – respondent No.1 herein that he had also contributed some amount to the purchase of the said property. Be that as it may, if the plaintiff has any rightful claim for the property, he can file an appropriate proceeding over declaration and other appropriate relief. Present suit filed under Section 6 of the Act, is, on the face of it, misconceived and is not maintainable.

5. In the result, the petition is allowed. Order dated 23.08.2006 is hereby quashed and set aside. Rule is made absolute with no order as to costs.

**(RAVI R.TRIPATHI, J.)**

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